

WEST CHICAGO INTERGOVERNMENTAL FORUM
December 11, 2009
Meeting Minutes

ATTENDEES

Barbara Magel, Counsel for Local Communities
John Wills, WBK Engineering, Local Communities
Tom Williams, IEPA
Chuck Grigalauski, IEPA
Kelly Grahn, IEMA/DNS
John Coakley, City of Warrenville
Don Feld, Thorium Action Group
John Oldenburg, DuPage County Forest Preserve District
Jessi DeMartini, DuPage County Forest Preserve District
Gerald Karr, Illinois Attorney General's Office
Mary Fleming, DuPage County State's Attorney's Office
Mark Krippel, Tronox
Tim Fischer, U.S. EPA, Superfund
David Seely, U.S. EPA, Superfund
Mary Fulghum, U.S. EPA, Office of Regional Counsel

GENERAL TOPICS

The meeting began with an update on the Tronox bankruptcy provided by Mary Fulghum and Mark Krippel. Mary said that, at the last Forum meeting, we had been expecting a December 8 auction date of Tronox assets. That date has now been delayed to December 21. Tronox is trying to obtain financing to reorganize and emerge from bankruptcy as a stand alone company instead of being sold to Huntsman Chemical. Mary said that there is a lot of negotiation being conducted between Tronox and state regulatory agencies and the United States, along with other Tronox creditors.

John Wills asked if it was possible for Tronox to leave behind its environmental liability in the process of being sold if the auction goes through. Mary said that is a possibility. In fact, it was pointed out that if Tronox reorganizes as a new company it will likely be leaving some environmental liabilities behind. John Wills asked how it helps us in West Chicago if the auction does not proceed. Mary said it helps because the United States and the states will be in a better position to recapture some of their claims if Tronox reorganizes versus being sold at auction. The Tronox reorganization would have to be negotiated, and unsecured creditors should come out in a better position with a reorganization.

Chuck Grigalauski asked if Huntsman or any other purchaser of Tronox would be buying the liability and the assets, or only the assets. Mary said that only the assets would be part of the auction sale. Tim Fischer added that we would then be in a position where EPA basically has to take over the cleanup. Gerry Karr said that part of the negotiation for the reorganized Tronox would be an attempt to secure funding for the Kress Creek cleanup. John Wills asked whether that would mean that Tronox conducts the cleanup or they “cash out” and someone else does it. Gerry said that the likely result would be some amount of cash. John asked who would get the cash and carry the project forward. Mary said that this has not been completely worked out yet and is part of the ongoing negotiations.

Mark Krippel said that he thinks there is a chance there will be some environmental Trust set up that could carry the project forward. Mark said that there should be a pot of money that would be distributed among Tronox’s liabilities. Mark added that, based on what he knows, the reorganization is definitely the better situation for all involved.

Tom Williams asked how a company could buy Tronox and not become liable for the contamination on the property since they are now a site owner. Kelly Grahn said that the assets being purchased are mostly active operations and not contaminated properties anyway. Mark Krippel said that the attorneys for Huntsman very carefully carved out what assets they wanted to avoid liability.

John Oldenberg asked the probability of a reorganization being completed. Mary and Mark said they just don’t know. Mark said that the production and sales of Tronox are actually very good considering the economy, which bodes well for the reorganization possibility.

John Wills asked if there was any progress on the fraudulent conveyance lawsuit. Mary said that the trial date is still set for September 2010. Mary said that discovery dates are set for March 2010 as well. John asked if that was a case Mary would work on. Mary said yes, although EPA is represented by the Department of Justice.

Jessi DeMartini asked, if the auction goes through, who would take over the REF and be responsible for cleaning it up. Mark Krippel said that General Motors serves as a recent example of this scenario. The new reorganized GM goes on with the continuing business, and there is an “old” GM that has ownership of these unwanted assets and some funding to disposition them. He said it is possible some of these properties could sit around for several years before they are dealt with. Mary clarified that the REF has a letter of credit that would provide for the cleanup of the REF site by IEMA if the bankruptcy does not address it. The REF is then supposed to become a city park after it is cleaned up.

REED-KEPPLER PARK SITE

Tim said that the Notice of Intent to Delete Reed-Keppler Park from the NPL was published in the Federal Register on December 8, 2009. A public notice should appear in the Daily Herald that announces we are accepting comments on the Notice of Intent to Delete until January 7. If EPA does not receive any adverse comments by January 7, then the deletion will become final on February 8, 2010.

KRESS CREEK/WEST BRANCH DUPAGE RIVER SITE

Documents

There were no new documents.

Cleanup Progress

Tim started out the Kress Creek update by explaining that he gave a presentation to the Risk-Based Prioritization Panel on November 3. Tim said that the panel asked a lot of questions, which he thought was a good sign, and that it seemed to be well-received. The November site rankings are complete, but they are confidential. In March, the panel is set to meet again to score new sites and rerank the list. Tim said that he would likely not hear about how much money Kress Creek could get until late March.

Tim explained that he has been holding off on setting up a contractor for Kress Creek until we hear the results of the auction, or whether there is some agreement that addresses the work. Tim said that the waiting period is rapidly coming to an end. If EPA has not heard anything meaningful by the end of January, then Tim will have to start getting a contractor in place to conduct Reach 7 work this summer. Tim explained that we have special account money that we can use to start developing work plans in advance of the panel announcement in March.

Tim explained that EPA Region 5 has a standing Remedial Action contract that we would have to utilize to conduct the work. Tim said that the contractor would have to develop Work Plans, and Tim said that he expects that they would mirror what we have already developed for Reach 7. John Wills asked if EPA had already picked who the contractor would be, and Tim said no that had not been determined. Tim explained that we have two Remedial Action contractors and it could be either one of them. John Oldenberg asked if it was possible that Arcadis or any of the other existing contractors who have worked on Kress Creek previously could be a subcontractor for one of those two companies. Tim said this was possible, but the government cannot direct its contractor to sub with any other company. John asked if the community could influence that at all because the community has been very satisfied with the work that Arcadis has accomplished in the past. Tim said that he understood that we have a very unique cooperative relationship with Arcadis, but that EPA has to very careful not to violate any

of the government contracting rules. Tim said that we would keep things going in the same manner as before, to the extent that it was possible, without violating the rules.

John Oldenberg said that the Forest Preserve District would like to know as soon as possible what work will be conducted because they have other contracts and grants that could be affected by the work in the West Branch DuPage River.

Tim then moved on to the site progress update. A pre-certification inspection was conducted on November 17 for Reaches 1, 2, and 3A. Tim said that the documentation to request closeout of these Reaches had been received by EPA, but there is some question when the Maintenance and Monitoring period began. Tim said that he would be researching the requirements under the Consent Decree to determine whether we can close out these Reaches. Tim said that if it is appropriate, EPA will issue a Certification of Completion to Tronox to closeout the Reaches.

Tim said that his update was completed and asked if there were any questions. John Oldenberg asked about the status of the Rt 59 bridge work in Reach 4. John said that he saw there were work plans being circulated and wanted to know if the schedule in the plan is valid. Tim explained that the purpose was to get the plan approved and have it in place and ready to go if the funding is available as a result of the bankruptcy process. There is no commitment in place for Tronox to complete that work since there is no funding guarantee.

RESIDENTIAL AREAS SITE

Recap of “old cleanup residual” issue: Kerr-McGee conducted a cleanup of 100+ residential properties in West Chicago in the mid-1980s. The issue is whether there is potentially any low-level residual contamination that was left behind at the bottom of the old excavation in the mid-1980s that was then covered with clean backfill soil. If such residual low-level contamination exists, it would probably be just slightly above EPA’s current cleanup standard, and the clean soil that was placed over it may have prevented EPA from detecting it during the Superfund investigation and cleanup that started in the mid-1990s. This issue was raised and EPA is now working to resolve it. This issue affects only those particular properties that were part of the mid-1980s cleanup. Properties that were not part of the 1980s cleanup are not affected by this issue.

David mentioned that since the last Forum meeting he completed his work on the Discovery Request resulting from EPA’s lawsuit against Anadarko and Kerr-McGee. David also was developing his presentation for the Risk-Based Prioritization Panel to request funding to complete the removal. David stated that he had received a lot of information from the City. However before the panel met, EPA had decided to utilize funds from the Special Account to complete any necessary work. Since the Special Account was set up pursuant to the Consent Decree for use at any of the West Chicago Superfund sites, EPA could transfer funds among the accounts to cover the expected work to complete the Residential Areas Removal. David is developing an estimate to

cover the work. Since the scope of the efforts needed are not yet known, David is attempting to conservatively estimate the amount needed to cover the work and EPA will then move the funds accordingly. The leftover funds will then be made available for use on the Kress Creek Site.

David stated that EPA is now preparing to conduct the work and is in the process of making a lot of decisions to determine the best course of action. EPA needs to decide whether the cleanup will continue as a Removal Action or if it will be conducted as a Remedial Action and which type of contract mechanism will be used for either option. David was hopeful that the decisions expected from the bankruptcy proceedings would have been finalized before EPA expended resources to initiate work in case Tronox would still be available to fulfill their obligations. David doesn't have any information on what the schedule for work will be at this time. The decisions made by the bankruptcy proceedings by December 21st may impact the approach. Unless something unexpected happens, David will be making plans for EPA to implement work next year.

Barb Magel asked how many homes will be impacted? David stated that he is unwilling to define the scope of the effort yet since EPA hasn't completed its evaluation of all the potential properties. David stated that at this time, 10 properties might need additional cleanup. Of the 10 properties, David estimated that only two would require significant work. Roughly a third of the properties may require a small amount of work with the rest of the properties only having one or two samples exceeding the criteria. David stated that the total amount of contamination identified so far is fairly limited. However, the total amount of properties impacted may expand based upon further review and investigation. Based upon what has been done so far, David didn't expect that the total amount of properties impacted would be more than triple the number identified to date.

Chuck Grigalauski stated that the President said that additional monies would be available to the Superfund program and asked if EPA knows how these monies be utilized and whether they will be used for the Kerr-McGee projects. David, Tim, and Mary could not answer the question but they would expect that monies would just increase the total Superfund budget to implement the program.

Barb Magel asked if EPA has plans to pursue the "no access properties" to complete the work. David stated that EPA plans to continue to gain access to all properties needed to complete the work but there has not been any recent discussions regarding the pursuit of these properties. One way or the other, EPA plans to complete the process for these properties. Barb stated that the City would love for these issues to be resolved so that they could be addressed this upcoming construction season as well. The City is beginning to think that it is time to take formal action against the owners to resolve the issues and will provide any help they can.

Barb asked if IEMA has any plans to complete the work at the REF. Kelly Grahn stated that he didn't think that IEMA will wait on the Superfund projects to close the REF. Barb stated that they looked long and hard for an alternative loading facility when the REF was almost done but work on Kress Creek had yet to start. Kelly stated that IEMA

has had internal discussions on what would happen if Tronox went away and how to use fund-lead money. Questions about who will operate the REF, who becomes the licensee and many others. We all agreed that once the auction/reorganization decisions are made that we all will have to discuss how to wrap up all the issues remaining among all the sites. Mark Krippel stated that the schedule in place for Tronox does plan to have the rail loading facility in service until the cleanup of the vicinity properties is completed.

David asked if the City still plans to take over the REF property at the completion of all the work or whether these plans have changed as a result of the bankruptcy proceedings. Barb stated that the City absolutely plans to take ownership of the property for use as parkland and has been waiting well over a decade for the work to be completed. The City is somewhat fearful that the bankruptcy proceedings may have some adverse impacts on these plans.

OTHER ISSUES

Update on NOAA Grant Projects

John Wills said that the project to build the Urban Stream Research Center is still on track for completion in 2010.

NEXT FORUM MEETING

The next meeting of the West Chicago Intergovernmental Forum is scheduled for **Friday, February 5, 2009, at 10 a.m.** in West Chicago City Council Chambers, West Chicago.

ATTENDANCE LIST

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December 11 2009

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